

Small Business Subcontracting Plans

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SUBCONTRACTING PLANS

FAR 19.7

- What requires the submittal of a Subcontracting Plan?
 - The Small Business Act (added by P.L.95-507)
 - Implementation in FAR 19.700
 - Clause is in FAR 52.219-9
 - Additional implementation and clauses in FAR
Sups
 - >\$500,000 or \$1,000,000, if construction
 - Becomes a material part of the contract upon award.
 - Firm must file SFs 294/295. Liquidated damages can apply.

Subcontracting Plans

- Section 8(d) of the Small Business Act:

The SBA is authorized to assist Federal agencies and businesses in complying with their statutory obligations and to evaluate the compliance of other-than-
small businesses with their Subcontracting Plans.

Subcontracting Plans

- **“Other-than-small”** ...any entity that is not classified as a small business.
- Large Businesses
- State and Local Governments
- Non-Profit Organizations
- Public Utilities
- Educational Institutions
- Foreign-owned firms (if any portion of their contract is to be performed in the United States)

Subcontracting Plans

- Any “Other-than-small” business that receives a Federal contract or subcontract over \$500,000 (over \$1,000,000 for construction of a public facility) must adopt a Subcontracting Plan with separate and distinct goals for SB, SDB, WOSB, HUBZone, SDVet and Vet.

Subcontracting Plans

- The proposed Subcontracting Plan must be accepted and approved by the Contracting Officer **BEFORE** the contract can be awarded. Plan becomes a material part of the contract upon award.

Subcontracting Plans

- Any contractor that fails to make a “good faith effort” to achieve the goals in its Subcontracting Plan may be found in material breach of contract and terminated for default, or liquidated damages may be imposed.

Subcontracting Plans

Subcontracting Plans are **Not** required -

- (1) from small business concerns
- (2) for personal service contracts
- (3) for contracts or contract modifications that will be performed **entirely** outside the U. S

Subcontracting Plans

- **When is a Subcontracting Plan required?**
- Contract or modification > \$500,000
- \$1 million for construction
- Base year and **ALL** option years determine threshold
- Must be subcontracting opportunities
- If determination made that no subcontracting opportunities exist, determination must be approved at a level above the Contracting Officer and placed in contract file

Types of Subcontracting Plans

- **Individual** – specific contract, entire period including options, separate goals and percentages for SB, SDB, WOSB, HUBZone, SDVet, and Vet **for each year of the contract.**
- **Commercial** – entire production of government/commercial items for offeror's fiscal year. Annual Plan shall be reviewed for approval by the agency awarding the offeror its first prime contract requiring a Subcontracting Plan.
- **Master** – contains all required elements of Individual Plan required by FAR **except** goals. Effective for a three-year period; negotiated and signed by the contractor and a DCMA ACO. **Offeror must then submit goals for each requirement at time of proposal submittal.**

Subcontracting Plans

- 11 detailed requirements (**FAR 19.704**)
- **Far 19.705** - Contracting Officer Responsibilities **BEFORE AWARD**
- **DFARS 219-705-4** A small disadvantaged business goal of less than 5% must be approved 1 levels above the contracting officer
- **FAR 19.705-6** - Contracting Officer **POST AWARD RESPONSIBILITIES**

Subcontracting Plans

11 Elements - FAR 19.704

1. Separate % goals, expressed in terms of percentages of total planned subcontracting, to each group (SB, SDB, WOSB, HUBZone, SDVet and Vet)
2. Total \$ planned to be subcontracted and total \$ to be subcontracted to each group
3. Types of supplies and services to be subcontracted specifically to each group

Subcontracting Plans

11 Elements - FAR 19.704

4. Method used to develop each of the goals
5. Method used to identify potential sources
6. Indirect goals – statement as to whether or not included in subcontracting goals
7. Name of Subcontracting Plan
Administrator and description of duties
8. Description of efforts that company will make to ensure that all small businesses will have an equitable opportunity to compete for subcontracts

Subcontracting Plans

11 Elements - FAR 19.704

9. Assurances that company will “flow-down” subcontracting requirements to its subcontractors
10. Assurances that company will cooperate in any studies or surveys and submit Standard Forms 294 and 295
11. A recitation of types of records the company will maintain to demonstrate its compliance with the Plan

Subcontracting Plans

- The next several slides have one guiding word throughout:

RESPONSIBILITY

Contracting Officer
responsibility

Subcontracting Plans Contracting Officer...Before Award

- 19.705-1 Set Monetary Incentives
- 19.705-2 Determine if proposed procurement meets dollar threshold, do subcontracting opportunities exist etc.
- 19.705-3 In preparing solicitation, give SBA PCR reasonable time to review and submit advisory comments, **if warranted, BEFORE** solicitation issued

Subcontracting Plans

Contracting Officer...Before

Award

- 19.705-4 Review the Subcontracting Plan for adequacy, required information, goals and assurances etc. (**CHECKLIST**)
- DFARS 219-705-4 Challenge any Subcontracting Plan that does not contain positive goals. **An SDB goal of less than 5% must be approved 1 level above the Contracting Officer.**

Subcontracting Plans **Contracting Officer...Before** **Award**

- 19.705-5 Consider contractor responsibility...Ex: Subcontracting Plan compliance in previous contracts
- Complete Subcontracting Plan checklist, submit to Small Business Specialist, and submit to PCR...Congressional Report
- Ensure acceptable Plan incorporated into and made a material part of the contract

Subcontracting Plans

Contracting Officer Post

Award

- 19.705-6 Notify SBA ...send award document, which will include the Plan, to the Area Office where contract will be performed, or, if a Commercial Plan, where contractor's headquarters is located. SBA Commercial Market Representative will call on that business for Plan compliance
- Assess Liquidated Damages, if warranted

Subcontracting Plan

Goals

- Current Government-wide goals...see section 15(g) of the Small Business Act:
- 23% - Small Business
- 5% - SDB
- 5% - WOSB
- 3% - HUBZone
- 3% - Service Disabled Veteran
- 3% - Veteran

SBA AREA OFFICES

- **Area 1** – CT, MA, ME, NH, NJ, NY, RI, VT, Puerto Rico and The Virgin Islands
- **Area 2** – DC, DE, MD, PA, VA, WV
- **Area 3** – AL, FL, GA, KY, MS, NC, SC, TN
- **Area 4** – IN, IA, IL, KS, MI, MN, MO, ND, NE, OH, SD, WI
- **Area 5** – AR, CO, LA, NM, OK, TX
- **Area 6** – AK, AZ, CA, HI, ID, MT, NV, OR, UT, WA, WY and Guam

Comprehensive Small Business Subcontracting Plan

- Department of Defense Test Program
- Limited to a few DOD “OTSB” contractors
- Defense contracts only
- Purpose: to determine if “plan” results in increased subcontracting opportunities for small and small disadvantaged business while reducing the administrative burdens on contractors.
- Good through September 30, 2005

Comprehensive....Eligibility

- Preceding fiscal year:
 - performed on at least 3 DOD prime contracts
 - furnished supplies and services (including professional services) to DOD
 - were paid \$5,000,000 or more
 - achieved a SDB goal of 5% or more

Comprehensive....initiatives

- Details on how going to publicize opportunities
- Solicit at least 1 SDB and 1 WOSB per competitive solicitation
- Establish a home page – advertise procurement opportunities
- Pursue new subcontract with eligible Indian-owned entity (Indian Incentive Program)
- New Mentor Protégé agreement with SDB
- Pursue new subcontract with HBCU-MI

SBA Amends 13 CFR Part 125

- **Maximum practicable subcontracting opportunities may include:**
 1. Breaking out of items for SB
 2. Conducting **Market Research**, Sources Sought, RFPs on SBA's Sub-Net, attending Matchmaking Events
 3. Early solicitation of SB...sufficient time to submit timely offer
 4. Providing adequate and timely information regarding SOW etc.

Amends...continued

5. Negotiating in good faith..no bait and switch
6. Directing SBs that need additional assistance to SBA
7. Assist in obtaining bonding, LOCs, insurances, necessary equipment, supplies etc.
8. Utilizing services of PTAC/SBDC organizations or other local or state organizations

Amends.....continued

9. Participating in a formal mentor protégé program with one or more small business protégés that results in developmental assistance

In addition...

- Provide specific examples of “good faith effort” to achieve \$ and % goals
- Submit timely and accurate SF 294, SF 295 or use new Electronic Subcontract Reporting System, “eSRS”; system will calculate %s automatically and provide an audit trail.(when it comes online).
- Cooperate and take part in Subcontracting Plan Compliance Reviews
- Provide pre-award written notification to unsuccessful SB offerors on all subcontracts >\$100,000 for which a SB concern received a preference
- Adopt as a “best practice, pre-award written notification to all unsuccessful offerors at or below \$100,000

Good Faith Effort Spelled Out

- Contractor performed one or more of items 1-9; documentation required
- If failed to achieve a socio-economic goal, contractor over-achieved goals in one or more other categories by an equal or greater amount
- Contractor fulfilled ALL requirements of its Subcontracting Plan

Subcontracting Plans

- Any contractor that fails to make a “good faith effort” to achieve the goals in its Subcontracting Plan may be found in material breach of contract and terminated for default, or liquidated damages may be imposed.